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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter)

Promotion of Competitive Networks)
In Local Telecommunications Markets)

WT Docket No. 99-217

Wireless Communications Association)
Internal, Inc. Petition for Rulemaking, to)
Amend Section 1.4000 of the Commission's)
Rules to Preempt Restrictions on Subscriber)
Premises Reception or Transmission)
Antennas Designed to Provide Fixed Wireless)
Services)

Cellular Telecommunications Industry)
Association Petition for Rule Making and)
Amendment of the Commission's Rules)
To Preempt State and Local Imposition of)
Discriminatory And/Or Excessive Taxes)
And Assessments)

Implementation of the Local Competition)
Provisions in the Telecommunications Act)
Of 1996)

CC Docket No. 96-98

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FEDERAL COMMUNICATIONS COMMISSION

COMMENTS

Pursuant to the Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217 and Third Further Notice Proposed Rulemaking in CC Docket No. 96-98 released July 7, 1999, The Howard Hughes Corporation hereby files its Comments.

The Howard Hughes Corporation ("THHC") is the developer of the master-planned community of Summerlin, located on the western edge of Las Vegas, Nevada. The

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community contains single-family homes, townhomes, condominiums, multi-tenant office buildings and retail space on approximately 22,000 acres. At its completion, the community will have approximately 160,000 residents living and working in Summerlin.

THHC wishes to provide the residents and workers in Summerlin with the most advanced telecommunications products and services available. We eagerly anticipate the growth of additional competition among multiple-service providers and believe that such competition is best fostered through a free and open marketplace that operates with minimal governmental intrusion. Toward this end, THHC respectfully requests that the Federal Communications Commission ("Commission") recognize that the marketplace should determine providers' access to multi-tenant environments (MTEs), including those that are community associations, and issues such as wiring pricing, sales and ownership. Moreover, we also urge you to protect existing property owners' rights and recognize that any attempt to provide telecommunications providers with any forced-entry privileges to access buildings or association property to install wiring or equipment without the consent of the owner(s) would constitute a taking of private property prohibited by the United States Constitution.

The FCC proposes several forms of forced entry: through use of utility rights-of-way; through use of incumbent local exchange (ILEC) provider networks; or through access to MTE property. Installation of telecommunications equipment on utility, ILEC, or other

MTE or association property would be a permanent physical occupation of this property, implicating the Takings Clause of the Fifth Amendment to the United States Constitution (see Supreme Court decisions in Loretto v. Manhattan Teleprompter and Gulf Power v. FCC). The FCC cannot mandate a taking without compensation in the absence of express Congressional authority, and therefore, the FCC is not authorized to promulgate forced-entry regulations.

Increasingly, developers, associations and building owners are seeking newer, faster, and more sophisticated telecommunications capabilities. They are looking to viable competition among telecommunications companies and the advancements such competition will produce, as a means to provide more advanced and affordable services to communities and building tenants. Forced-entry provisions undermine the ability of developers, associations and building owners to properly serve their residents and tenants by denying them the authority to permit or deny access to their property through a written agreement that governs provider conduct during equipment installation and maintenance. They must be allowed to choose a telecommunications provider that will not damage common or private property and insure that any damage is properly repaired and paid for by the provider causing the damage. In a forced-entry environment, all telecommunications providers could access the properties without regard to how they treat the property, possible damage to the other telecommunications or utility equipment during installations, the security of the property

or the increased risks of property damage or personal injury due to the increased number of telecommunications personnel accessing the property.

In addition, real estate is a finite resource and common areas or space in equipment rooms is always limited. It is simply not possible to accommodate an unlimited number of providers. Forced-entry statutes favor the incumbent providers and are inherently unfair to residents and property owners by precluding them from adding services or substituting a new provider for an incumbent because providers and not the property owners controlled the space allocations.

In this proceeding, the FCC requests comments on whether it should terminate or limit existing or prospective exclusive contracts between telecommunications providers and associations or building owners. The option of an exclusive contract is an important aspect of the free market as well as an established right of property ownership. Despite circumstances where an association or building owner must accept unbalanced agreements because of an incumbent provider's market force, certain exclusive agreements ensure the availability of telecommunications services and advance the development of competition. Moreover, exclusive agreements in competitive environments may return significant benefits to residents and building occupants who are able to secure new technology, high-quality services and lower prices because of

the prospect of an exclusive contract. Exclusivity may allow providers to recoup installation, major maintenance, or technology upgrade costs.

The *Notice of Proposed Rulemaking* also invites comments as to whether any forced-entry regulations would be consistent with the OTARD Rule. After extensive discussion and analysis, the FCC correctly determined that Section 207 of the Telecommunications Act of 1996 does not permit takings of property. Because the FCC determined that it did not have authority to take property in the OTARD proceeding, it cannot now decide that the Commission has the authority to take an even greater amount of property through forced entry. You also ask if the FCC should extend the OTARD Rule to preempt community association restrictions on other types of reception and transmission antennas. Without Section 207, the FCC has no authority to preempt community association restrictions on DBS, television broadcast, and MDS antennas. If Congress had intended for other types of antennas to be covered, then it would have included them in Section 207.

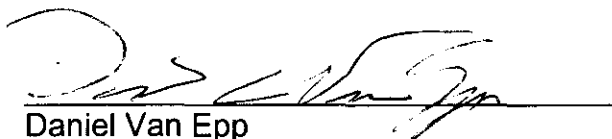
In conclusion, THHC supports the development of a competitive telecommunications marketplace enabling developers, associations and building owners to obtain advanced, competitive services from a wide variety of telecommunications providers. However, the methods proposed in this *Notice of Proposed Rulemaking* will not promote the development of an advanced competitive marketplace. Forced entry proposals would

take, damage, and destroy private property for the benefit of telecommunications providers. Existing providers would be able to occupy available association and building space, preventing newer, more competitive providers from offering services at a later date. Forced entry would also deprive associations and property owners of a fundamental right to control their own property.

Abrogating or prohibiting exclusive contracts would also place developers, associations and building owners at a disadvantage when negotiating service agreements.

Since the telecommunications marketplace is rapidly evolving, the FCC needs to take little, if any, action to promote this growth. Developers, associations and building owners desire to take advantage of competitive telecommunications options and do so when they are available. There is no need to impair the growth of this marketplace by depriving them of their ability to control their own property and negotiate competitive agreements.

Respectfully submitted,



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